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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial report of States parties due in 1993

Addendum

LESOTHO

[28 May 1998]

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Article 1

1. The 1993 Constitution provides that Lesotho shall be a sovereign democratic Kingdom; and that the territory of Lesotho shall comprise all the areas that immediately before 4 October 1966 comprised the former colony of Basutoland together with such other areas as may from time to time be declared by an Act of Parliament to form part of Lesotho.

Paragraph 1

2. It is important to point out from the outset that the democratically elected Government subscribes to both components of the right of self-determination: external self-determination; and internal self-determination, which refers to the right of people to determine how they shall be governed and the right to be free from despotic governments.

3. On 4 October 1966 the people of Lesotho regained their sovereignty in terms of section 1 of Independence Act 1966 (an Act of the United Kingdom Parliament), which provided, inter alia, that immediately before that date, the territory constituting the colony of Basutoland ceased to form part of Her Majesty's dominion and became an independent Kingdom under the name of Lesotho. By regaining sovereignty, the people of Lesotho realized their right of (external) self-determination.

4. The first independence elections were won by the Basotho National Party (BNP), which took the reigns of government and facilitated the enjoyment of the right of (internal) self-determination from 1966 until 1970, when the second elections were held. The Basotho National Party lost these elections to the Basotho Congress Party (BCP), and subsequently declared a state of emergency (State of Emergency Order No. 1, 1970), suspended the Constitution (Constitution Suspension Order No. 2, 1970), and invalidated the elections (General Election (Invalidation) Order No. 4, 1970). This was an infringement of the people's right of internal self-determination.

5. In 1974 a nominated National Assembly was put in place and continued, mutatis mutandis, until 1985. In 1985 an "election" was planned, but because of the nature of the Government of the day, which was characterized by rampant intimidation and harassment of the opposition, and the manner in which the elections were to be held, the elections never materialized. The members of the BNP were returned "unopposed" and continued with governance. This state of affairs continued until 20 January 1986.

6. In 1986 the military stepped in and took over government machinery (Lesotho Order No. 1, 1986) and continued to run Government until 27 March 1993, when elections were held under the National Assembly Election Order No. 10, 1992. Order No. 1 of 1986 provided in section 3 that subject to the provisions of the Order all laws that were enforceable in Lesotho immediately before the coming into operation of the Order would continue to be of full force and effect, provided that any law which was inconsistent with the Order would, to the extent of such inconsistency, be void.

7. The 1993 elections, which were won by the BCP were observed by the international community and were certified to have been free and fair, thereby

allowing the people of Lesotho once again to enjoy their right of (internal) self-determination. This was confirmed by the court, which held that the elections were free and fair. (See Abel Moupo Mathaba and Others v. Enoch Matlaselo Lehema and Others 1993 - 1994 LLR - LB p. 402; see also Basotho National Party v. Principal Secretary of Ministry of Law, Parliamentary and Constitutional Affairs and 30 others, CIV/APN/240/93.)

8. The people's right of (internal) self-determination was again infringed on 17 August 1994, when the democratically elected Government was overthrown in a royal coup by Order No. 1 of 1994, which also suspended parts of the 1993 Constitution. This infringement of the right of (internal) self-determination lasted until 14 September 1994, when the people's Government was restored after the intervention of the Governments of Botswana, Zimbabwe and South Africa. A memorandum of understanding and measures and procedures relating to the restoration of the constitutional order in Lesotho was concluded between His Majesty King Letsie III and Dr. Ntsu Mokhehle, which was guaranteed by the Presidents of the Republics of Zimbabwe, Botswana, and South Africa.

Paragraph 2

9. Lesotho has taken advantage of the highland water and established a water project called The Lesotho Highlands Water Project (LHWP) in terms of The Lesotho Highlands Development Authority Order No. 23 of 1986. The project is a joint venture between Lesotho and South Africa, following an agreement between the two Governments. The LHWP, estimated to cost $2.5 billion, involves construction of a series of dams for purposes of providing water for domestic consumption and export to South Africa, as well as production of hydroelectric power for local use and commercial, navigation, fisheries, agricultural, industrial, manufacturing, recreational and tourist purposes. Through this project, Lesotho freely disposes of its natural resources, including water or "white gold", as it is sometimes referred to.

10. In order to ensure that the people of Lesotho are not prejudiced in the disposal of their natural wealth and resources, the Constitution of Lesotho vests all land in the Basotho nation. The power to make grants of interests in or rights over land, to revoke or derogate from any allocation or grant that has been made or otherwise to determine or restrict any interest or right that has been granted is vested in the King in trust for the Basotho nation (see sects. 107 and 108 of the Constitution of 1993).

11. As far as the provision that the people may not be deprived of its means of subsistence is concerned, section 13 (1) of the Land Act, No. 17 of 1979 provides that the power to revoke an allocation shall apply in respect of land which is not the subject of a registrable title and shall be exercised by the Land Committee for the area of jurisdiction, under the chairmanship of the Chief having jurisdiction or such land committee as the Minister may establish under section 18. There is need to give written notice of at least 30 days to the person affected as well as to set out clearly the grounds upon which the allocation is revoked. (sect. 13 (2) and (3).) Where an allocation has been revoked, and if the allottee has made lawful improvements on the land, the allottee is entitled to compensation in the amount of the value of the improvements (sect. 15).

Paragraph 3

12. Lesotho is a member of the United Nations, the Organization of African Unity, the Non-Aligned Movement and the Commonwealth of Nations. As a member of these international organizations, the Government of Lesotho recognizes the right of self-determination for its people and other peoples, in conformity with the Charter of the United Nations. To this end, Lesotho has over the years, given unwavering support for and expressed solidarity with the peoples struggling for freedom and independence and against apartheid. Lesotho also supports all United Nations resolutions on the exercise of the right of self-determination.

13. In recognition of the foregoing, Lesotho's foreign policy is based on the cornerstone of close cooperation with its sole neighbour, the Republic of South Africa, as well as other countries in the subregion, and respect of the sovereignty of all other independent States throughout the world and non-interference in their internal affairs.

14. The Government of Lesotho is cognizant of the fact that the realization of the right of self-determination is a sine qua non in the cultivation of friendly ties and cooperation among States as well as in fortifying global peace and understanding.

Article 2

Paragraphs 1 and 2

15. The rights recognized in the Covenant are guaranteed to all individuals (citizen and aliens) residing in Lesotho. The Constitution specifically provides, in section 4 (1), that every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to fundamental human rights and freedoms, that is to say, to each and all of the following:

(a) The right to life;
(b) The right to personal liberty;
(c) The freedom of movement and residence;
(d) Freedom from inhuman treatment;
(e) Freedom from slavery and forced labour;
(f) Freedom from arbitrary search or entry;
(g) The right to respect for private and family life;
(h) The right to a fair trial of criminal charges against him and to a fair determination of his civil rights and obligations;
(i) Freedom of conscience;
(j) Freedom of expression;
(k) Freedom of peaceful assembly;
(l) Freedom of association;
(m) Freedom from arbitrary seizure of property;
(n) Freedom from discrimination;
(o) The right to equality before the law and equal protection of the law; and
(p) The right to participate in Government.

16. The workshop which deliberated on the draft report observed that section 4 of the Land Amendment Order 1986 introduces an element of discrimination in that a citizen of Lesotho who is not a Mosotho shall not be capable of holding title to land. On the other hand, it could be argued that given the size of the population of Lesotho, which is about 2 million, naturalized citizens who have more financial resources could buy all the land and displace the Basotho.

17. It is also worth bringing to the attention of the Committee that section 18 (4) (c) of the Constitution permits the application of customary law even if it is discriminatory, where application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law. The Constitution further provides that its provisions shall have effect for the purpose of affording protection to all rights and freedoms, subject to such limitations of that protection as are contained in its provisions which are designed to ensure that the enjoyment of his rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

18. It is also provided that for the avoidance of doubt and without prejudice to any other provision of the Constitution, the provisions of the Constitution concerning rights and freedoms shall, except where the context otherwise requires, apply as well in relation to things done or omitted to be done by persons acting in a private capacity (whether by virtue of any written law or otherwise) as in relation to things done or omitted to be done by or on behalf of the Government of Lesotho or by any person acting in the performance of the functions of any public office or any public authority (sect. 4 (2)).

19. The Constitution of Lesotho provides for freedom from discrimination in section 18, which reads as follows:

> "(1) Subject to the provisions of subsection (4) and (5) no other law shall make any provision that is discriminatory either of itself or in its effect.
>
> "(2) Subject to the provisions of subsection (6) no person shall be treated in a discriminatory manner by any person acting by virtue of any unwritten law or in performance of the functions of a public officer or any authority.
>
> "(3) In this section the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political opinion, national or social origin, property, birth other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not subject to or are accorded privileges or advantage which are not accorded to persons of another description."

The above provision is a distinction between citizens of Lesotho and non-citizens. This distinction is permitted by article 1 (2) of the International Convention on Elimination of all Forms of Racial Discrimination

which states that "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens".

20. Aliens in Lesotho are not discriminated against, but there is a procedure to be followed before they gain entry and sojourn in Lesotho. The Aliens Control Act No. 16 of 1966 provides in section 5 that no alien shall enter Lesotho or remain there for purpose of permanent residence. Subject to the provisions of sections 3 and 38, no alien shall enter Lesotho or be or remain there:

(a) For the indefinite sojourn therein, unless he is in possession of a permit for the said purpose, issued in terms of section 6; or

(b) For the purpose of temporary sojourn therein unless he is in possession of a temporary permit issued in terms of subsection (1) of section 7 or unless he has been permitted to enter under section 9;

(c) For the purpose of travel therein or for the purpose of a visit for private, business or official purposes unless he is in possession of a valid passport.

21. Subject to the provisions of sections 3 and 38, if an alien is found in Lesotho and he is not in possession of an indefinite permit or a temporary permit or has not been permitted to enter under section 9 or is not in possession of a valid passport or if the period of visit under paragraph (c) of subsection (2), as endorsed on a valid passport, has expired, his presence in Lesotho shall be unlawful for the purpose of part (iv), which relates to the expulsion of aliens.

22. In or about May 1991, Lesotho experienced riots which targeted aliens after the murder of a woman alleged to have stolen a T-shirt worth M 3.99 from a shop, whereupon the employees of the shop fatally assaulted her. The proprietors of the shop were White South Africans. Thereafter, an angry mob of Maseru residents stormed the shop, seeking to avenge the death of the deceased. Police stepped in to maintain order, but the angry mob started to fight running battles with them. The mob resorted to attacking and looting business premises belonging to Chinese, Indian and White people, resulting in the death of 35 people, with 63 injured and damage to property worth millions of maloti. Over 425 people were arrested and of these four were charged with murder, but were eventually convicted of assault with intent to murder and theft.

23. The Government of the day responded by saying that the riots did not reflect government policy. There is, however, need for a law to be enacted to punish racial hatred and violence. (see also Rex v. Monyake and Others CRI/T/44/93). In his reasons for sentence the Judge was of the opinion that the riots spread to the whole of Lesotho because it was felt that human life was seen by traders as being cheap in Lesotho. People had rioted because they believed the State put property and the creation of jobs above human life (most big businesses in Lesotho belong to ethnic Chinese and Indians, and White South Africans). This case, however, does not directly make reference to racial hatred and violence.

Paragraph 3

24. There is no distinction between a citizen of Lesotho and an alien as far as access to remedies in the courts is concerned. The case of Johnny Waka Maseko v. Attorney General and Another (Court of Appeal (Civil) No. 27 of 1988) shows this. In this case the appellant had lodged an application in the High Court in which he challenged his detention. The High Court held that the detention was lawful, whereupon the appellant appealed; but before the appeal was heard, he was deported to South Africa. The Court of Appeal, inter alia, found that the act of deportation does not disentitle a deportee from an order on his application including the appropriate order as to costs.

Article 3

25. Section 4 (1) of the 1993 Constitution of Lesotho states that every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to fundamental human rights and freedoms. Subsection (o) provides for the right of equality before the law and equal protection of the law.

Article 4

26. The Constitution allows for derogation from the right to personal liberty, freedom from discrimination, and the right to equality before the law and equal protection of the law only in a state of emergency. Section 21 (1) provides that nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 6, section 18, or section 19 of the Constitution to the extent that the Act authorizes the taking, during any period when Lesotho is at war or when a declaration of emergency under section 23 of the Constitution is in force, of measures that are necessary in a practical sense in a democratic society for dealing with the situation that exists in Lesotho during that period.

27. The declaration of emergency is provided for in section 23 of the Constitution, which reads as follows:

> "(1) In time of war or other public emergencies which threatens the life of the nation, the Prime Minister may, acting in accordance with the advice of the Council of State, by proclamation which shall be published in the Gazette, declare that a state of emergency exists for the purposes of this chapter.
>
> "(2) Every declaration of emergency shall lapse at the expiration of fourteen days, commencing with the day on which it was made unless it has in the meantime been approved by a resolution of each House of Parliament.
>
> "(3) A declaration of emergency may at any time be revoked by the Prime Minister acting in accordance with the advice of the Council of State, by the proclamation which shall be published in the Gazette.

"(4) A declaration of emergency that has been approved by a resolution of each House of Parliament in pursuance of subsection (2) shall, subject to the provisions of subsection (3), remain in force so long as those resolutions remain in force and no longer.

"(5) A resolution of either House of Parliament passed for the purpose of this section shall remain in force for six months or such shorter period as may be specified therein:

Provided that any such resolutions may be extended from time to time by a further such resolution, each extension not exceeding six months from the date of the resolution effecting the extension.

"(6) Where the resolution of the two Houses of Parliament made under subsection (2) or (5) differ, the resolution of the National Assembly shall prevail.

"(7) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

"(8) The King may summon the two Houses of Parliament to meet for the purposes of this section, notwithstanding that Parliament then stands dissolved and that the persons who were members of either House immediately before dissolution shall be deemed, for those purposes, still to be members of that House shall, when summoned by virtue of this subsection, transact any business other than debating and voting upon resolutions for the purposes of this section."

Article 5

28. For purposes of this article it is sufficient to say that Lesotho undertakes to honour treaty obligations and to this end endeavours to interpret the various articles contained in the Covenant in good faith, as stipulated in the Vienna Convention on the Law of Treaties, with a view to realizing the objectives of the Covenant.

Article 6

29. The right to life is guaranteed by the Constitution. Section 5 of the 1993 Constitution provides as follows:

"(1) Every human being has an inherent right to life. No one shall be arbitrarily deprived of his life.

"(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having

been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is necessary in the circumstances of the case:

"(a) for the defence of any person from violence or for the defence of property;

"(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

"(c) for the purpose of suppressing a riot, insurrection or mutiny; or

"(d) in order to prevent the commission by that person of a criminal offence or if he dies as a result of a lawful act of war or in execution of the sentence of death imposed by a court in respect of a criminal offence under the law of Lesotho of which he has been convicted."

30. The workshop which deliberated on the draft report noted that since exceptions as provided above are available at common law, there is no need to elevate them to the Constitution.

31. In order to guarantee to all human beings residing in Lesotho the full enjoyment of the right to life as well as to protect them against arbitrary deprivation of life, the following measures were deemed appropriate.

Reform of the security services

32. Government is sensitizing the security forces and police on respect for human rights. Although the law and judiciary are in place to punish perpetrators of human rights abuses the police are reluctant and/or unwilling to investigate certain cases and bring the culprits to justice.

33. The murder of the Deputy Prime Minister, Selometsi Baholo, in April 1994 is yet to be further investigated. The perpetrators of the fatal shooting at Maseru Central Charge Office in October 1995 are also to be brought to justice. This position is well articulated by Justice W.C.M. Maqutu of the High Court of Lesotho, when he says "we are presently faced with an upside-down devolution of power. The Lesotho Government has inherited a situation in which Government is coerced by the public servants, who are supposed to be the arms of Government, through which to enforce its authority. Without State authority, human rights cannot be meaningful because court orders cannot be enforced" (see paper entitled "The Courts in Lesotho", presented by Judge Maqutu during the National Seminar on Human Rights and Democracy).

34. The same judge, in his obiter dicta in Rex v. Kubutu CRI/T/51/91, also had occasion to criticize the way police behave and the manner in which they handle firearms registers, their lack of training and discipline, their violence and intimidation in maintaining law and order, and their careless attitude for the reputation and good name of the police force in general. The

judge was of the opinion that the police had turned into a bandit cooperative, which assaults, despoils and takes the lives of the public at will, although it is employed to protect it.

35. In order to remedy the ugly scenario the Government is determined to retrain the security forces and the police, by way of in-service training and concerted human rights sensitization as mentioned above.

Control of weapons

36. The Kingdom of Lesotho is a party to the Non-Proliferation Treaty and its Protocol of 1973, to ensure that nuclear weapons, which threaten life, are not produced. Lesotho ratified the Chemical Weapons Convention on 7 December 1994. In April 1996, Lesotho signed the African Nuclear-Weapon-Free-Zone Treaty (Treaty of Pelindaba).

37. When a situation developed in January 1994 in the armed forces of the country, whereby two rival factions emerged and started to fight each other, the Government took steps to ensure that full-scale war did not erupt. These measures included involving the heads of State of Botswana, South Africa and Zimbabwe, the Secretary-General of the Commonwealth, the Secretary-General of the Organization of African Unity, representatives of the United Nations and the Anglican Archbishop of Cape Town in negotiating peace. Thereafter, a Commission of Inquiry comprising members from the above-mentioned countries, as well as local personalities and the clergy, was set up. The Commission made recommendations to the Government which are being implemented in order to ensure lasting peace and stability.

Health

38. The Government of Lesotho, through the Ministry of Health and Social Welfare, is making tremendous efforts in creating favourable conditions for the enjoyment of the right to life by increasing immunization coverage (see the annexed report* of the Ministry of Health and Social Welfare (MOHSW), October 1993).

39. The situation and health status of women and children in Lesotho has been adversely affected by socio-economic, political and environmental developments in the country. Poverty has increased due to reduced export earnings associated with the world recession, retrenchment of migrant miners from South Africa, and severe and persistent drought. Inadequate community participation in health care, inadequate quality and accessibility of health services related to staff shortages, low staff morale, lack of transportation and impassable terrain in certain localities have further contributed to the deteriorating health status.

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* Available from the Secretariat.

40. Over a one-year period chronic malnutrition amongst under-fives increased by 9 per cent (from 33 per cent in 1992 to 42 per cent in 1993). A 1993 micronutrients survey showed that goitre also increased among children from the 1988 survey figures, although it decreased slightly among women, with the total goitre rate for school-going children at 42.5 per cent and for women of child-bearing age at 36 per cent. The prevalence of vitamin A deficiency as of 1993 was 13.4 per cent.

41. According to the Health Sector Development Plan, major diseases, which contribute to high mortality among children, are acute respiratory infections (ARI), immunization-preventable diseases and diarrhoea. Pneumonia accounts for 70 per cent of hospital admissions for respiratory diseases for under one-year-olds and about 60 per cent of the over-ones. Diarrhoea hospital admission rates have increased dramatically among under-fives, in part due to the drought and resulting poor water quality. The infant and child mortality rates are 106 per 1,000 and 156 per 1,000 live births respectively.

42. Five per cent of hospital paediatric admissions are for TB cases in the under-14-year olds. Amongst adult men and women, there has been a dramatic increase (40 per cent) in the number of registered TB cases between 1988 and 1992. The prevalence of HIV-associated TB is much higher among females (18 per cent) than males (10 per cent). Sexually transmitted diseases (STDs), particularly HIV/AIDS, threaten to increase child and maternal mortality rates, as well as worsen household dependency ratios through the premature death of young adults (Disease Control Unit - MOHSW 1994).

43. Community health promotion has been improved through the training and deployment of Community Health Workers. Community partnership in health service financing and income generation for food security have been improved in eight health service areas through the Bamako Initiative (BI).

44. The Government of Lesotho (GOL) has adopted primary health care (PHC) as its strategy for health development in the country. "The Health and Social Welfare Sector Development Plan, 1995/96-1999/2000" emphasizes improving access to health services - particularly for geographically hard-to-reach communities, disparity reduction, decentralization, cost-effective interventions, partnership with the community, and intersectoral collaboration.

45. On the basis of the information currently available areas identified as contributing significantly to morbidity and mortality in the country, and therefore of priority for action, include TB, STDs, and HIV/AIDS, pregnancy-related conditions, diarrhoea, ARI, measles and malnutrition. These areas, which can be grouped into the broad categories of maternal health, child health, reproductive health and nutrition, will be the focus of the 1997-2001 UNICEF/GOL programme of cooperation.

46. The 1993 international evaluation survey of Mother and Child Health (MCH) Family Planning in Lesotho indicated a full immunization coverage rate of 71 per cent of children under one year of age. The majority of the reasons given for children not being fully immunized were attributable to low motivation. In addition, the drop-out rates of 7.8 per cent for DPT and 6.6 per cent for polio between the second and third doses were entirely

attributed to wrong or short intervals. While 59 per cent of children had received BCG, 4 per cent had no scar. Of the 74 per cent of children who had received measles vaccine, 5 per cent had received it at an age earlier than recommended. In addition, the expanded programme of immunization (EPI) programme has recently experienced managerial and organizational constraints, resulting in, for example, exhaustion of vaccine stocks.

47. The 1993 evaluation found a drop in use of Oral Rehydration Solution (ORS) from 60 per cent to 42 per cent, although 85 per cent of caretakers knew how to use ORS. Case management at health centres was not satisfactory. Oral Rehydration Therapy (ORT) corners had been established in only 15 per cent of the facilities assessed and a total of 52 per cent of facilities reported ORS to be out of stock. Communication with caretakers was inadequate and 32 per cent of the facilities had no health education materials.

48. ARI are responsible for 25 per cent of deaths of hospitalized children in Lesotho. In 1993, ARI accounted for 46 per cent of all outpatient visits of children under five years of age, compared with 14.5 per cent for gastro-enteritis and 0.5 per cent for EPI-targeted diseases. An evaluation in 1991 found that health personnel treated ARI patients with appropriate drugs, but communication of appropriate information to the child's mother/caretaker was poor.

49. The 1993 evaluation survey also revealed that most children continue to be breastfed and/or given fluids and food during diarrhoea episodes.

50. There are opportunities for better performance in the next programme cycle. The high literacy among women in Lesotho, the high immunization coverage and virtual absence of reported cases of poliomyelitis and tetanus in the last three years are opportunities for project success. Another opportunity is the introduction of the integrated management of the sick child as a major approach in the health system. Integrated management of the sick child will lead to more accurate identification of illness in outpatient settings, ensure more appropriate and, where possible, combined treatment of all the major illnesses and speed up referral of severely ill children. Health workers will be trained in how to communicate key health messages to mothers, thus helping them understand how best to ensure the health of their children.

51. The constituency needs assessment exercise in Lesotho is creating awareness of community need which will increase demand for health services for children and improve health facility expansion and utilization. The enthusiasm showed by the Boy Scouts and Girl Guides in ORT and ARI advocacy and social mobilization allows for personalized information dissemination to families nationwide. Increased awareness of the importance of a holistic approach to child health, including proper nutrition, water and environmental sanitation, is encouraged.

52. The introduction of the infusofeed balloon device to Maluti and Mohale's Hoek hospitals in 1994, led to a 50 per cent reduction of mortality and a 21 per cent reduction of hospital stay time of children admitted with dehydration and malnutrition. The continued use of the device is an opportunity for improved management outcome in hospitals and health centres.

53. This project will consolidate gains and ensure they are sustained and improved. The managerial and technical skills and the motivation level of staff will be improved through decentralized training and supervisory support. Further efforts will be directed at improving health service coverage. Comprehensive health care and service delivery through all hospitals and health centres will be advocated for, as per basic service provision guidelines for the different levels of care.

54. EPI emphasis will be on increasing the immunization rates, eliminating neonatal tetanus and declaring Lesotho a polio-free country. Hepatitis B vaccine will be introduced. Vitamin A capsules will be distributed through the EPI programme. In order to ensure full access, accelerated EPI services will also be delivered through mobile and outreach teams, especially in the hard-to-reach rural mountain areas. The cold chain will be maintained to ensure availability of potent vaccines in all health facilities. Community Health Workers will be trained and supervised to deliver services of advocacy and social mobilization as well as to treat minor ailments and vaccinate children.

55. The project will further update, at all levels, the skills of health workers in management of diarrhoea and ARI and also to mobilize parents and caretakers on effective home case management. For more information see the report at annex.

56. The Ministry of Health and Social Welfare has since 1987 been involved in controlling and preventing the spread of HIV/AIDS in the country. This has been in collaboration with donor agencies. The number of AIDS patients and people who are HIV positive has been steadily increasing. According to the AIDS Prevention Unit of the Ministry of Health, in June 1997 there were 2,268 AIDS cases. A national consensus workshop on strategic planning for the prevention and control of HIV/STD, Second Medium-Term Plan 1995-2000, was held from 3 to 5 April 1995 in Mohale's Hoek. This workshop identified a number of determinants for HIV/AIDS and also suggested interventions, including avoiding pregnancy when one partner is HIV positive, promotion of maternal child health services including counselling, testing of blood for HIV before transfusion, sterilization of skin-piercing instruments, etc.

57. In addition to governmental efforts the Christian Council of Lesotho AIDS Education Unit also is involved in the control of the spread of AIDS. Their activities include support to individuals and families affected by AIDS, bringing awareness about AIDS to the population and advocating for change in sexual attitudes.

Protection against torture

58. The Internal Security Act No. 24 of 1984 was intended to regulate the internal security of Lesotho. This, however, has been abused by previous Governments which detained members of the opposition and anybody whose views were contrary to those of the Government of the day. Simon Frank Mapetla v. Solicitor General LLR 399, Sello v. Commissioner of Police and Another, 1980 LLR p159; Court of Appeal (Civil) No. 27 of 1988 - Johnny Waka Maseko v. The Attorney General and Another, are all indicative of the above-mentioned scenario. This is, however, being redressed by the democratically elected

Government, particularly by repealing the oppressive law. It is significant to point out that the democratic Government respects the right to life and has never ordered/authorized extrajudicial execution of anybody.

59. As far as compensation of victims of torture is concerned, the law always takes its course, and victims go to court for compensation. There is, however, the issue of people who were shot at and killed, and some maimed, when they demonstrated against the dissolution of the democratically elected Government on 17 August 1994. This will be solved in the near future, as Government has made it clear that despite the amnesty granted to members of the defence forces and former members of the Lesotho Liberation Army, victims are free to claim compensation in courts of law.

Capital punishment

60. The Government has not yet taken steps to abolish capital punishment. In practice, however, most death sentences are commuted to life imprisonment or long prison sentences.

61. Since 1992 to date six death sentences have been handed down by the High Court for murder. In Phumo v. Rex CA/CRI/7/90 the Court of Appeal commuted the death sentence to seven years' imprisonment; in Rex v. Sosolo CRI/T/13/90, the Court of Appeal commuted the death sentence to 15 years, while in Sekhobe Letsie and Another v. Rex CA/CRI/3 and 4/91 the death sentence was commuted to life in respect of the second accused.

Article 7

62. The Government is concerned about torture, cruel and inhuman or degrading punishment. Section 8 (1) of the Constitution provides that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment. Subsection (2) further provides that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution. To this end the security forces are being sensitized about prohibition of torture, as was the case during the National Seminar on Human Rights and Democracy and the in-service training course for police and prison officers organized under the auspices of the Support for Human Rights and Democracy Project (see the annexed National Seminar report and the in-service training reports)*.

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* Available from the Secretariat.

63. The inter-ministerial committee which debated the draft report recommended that as a means of eradicating torture by the police and security forces, the Commissioner of Police should not only invite torture victims to lodge complaints, but must ensure that the money paid out to torture victims is disseminated to the general public. It was also recommended that when the Commissioner of Police deals with torture complaints, the public ought to be invited and the Law Society should be represented at the hearings.

64. It is also Government's intention to ratify the Convention against Torture in the not-too-distant future. The establishment of a Human Rights Unit and related structure within the Ministry of Justice and Human Rights, as indicated above, is instrumental in this regard.

Article 8

65. The Constitution specifically provides for freedom from slavery and forced labour. Section 9 provides as follows:

"(1) No person shall be held in slavery or servitude.

"(2) No person shall be required to perform forced labour.

"(3) For the purpose of this section, the expression forced labour does not include:

"(a) any labour required in consequence of the order of a Court;

"(b) any labour required of a person while he is lawfully detained that, though not required in consequence of the sentence or order of a Court, he is reasonably required in the interest of hygiene or for the maintenance of the place at which he is detained;

"(c) any labour required of a member of a disciplined force in pursuance of his duties as such or in the case of a person who has conscientious objections to service as a member of a military or air force, any labour that person is required by law to perform in place of such service;

"(d) any labour required during any period when Lesotho is at war or a declaration of emergency under section 23 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances or any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

"(e) any labour reasonably required by law as part of reasonable and normal community or other civic obligations."

66. Forced labour, which is defined as work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, is prohibited by the Labour Code Order, 1992. Section 7 of the Labour Code Order states that:

> "(1) Any person who exacts or imposes forced labour, as defined in the code, or causes or permits forced labour to be exacted or imposed for his or her own benefit or for the benefit of any other individual, association or other such body shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Maloti or imprisonment for a term not exceeding one year, or to both such fine and imprisonment.
>
> "(2) Any Chief or Public Officer who puts any constraint upon the population under his or her charge, or upon any individual member of such population, to work for any private individual, company, association or other such body shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment."

67. As far as prohibition of holding one in slavery and servitude is concerned, the Criminal Procedure and Evidence Act No. 9 of 1981 provides under section 59 that:

> "(1) If it appears to a Magistrate on complaint made on oath by a parent, husband, relative or guardian of a woman or girl, or any other person who in the opinion of the Magistrate is acting in good faith in the interest of the woman or girl, that there is reasonable ground for suspecting immoral purposes by any person in any place within the Magistrate's jurisdiction, he may issue a warrant to a peace officer authorizing him to search for the woman or girl and when found to take the woman or girl and detain the woman or girl in a place of safety until the woman or girl can be brought before a Magistrate.
>
> "(2) The Magistrate before whom the woman or girl is brought under this section may cause the woman or girl to be delivered up to her parent, husband, relative or guardian, or otherwise deal with her as the circumstances of the case require.
>
> "(3) The Magistrate issuing a warrant may, by warrant direct any person accused of unlawfully detaining a woman or girl to be arrested and brought before him or some other magistrate having jurisdiction.
>
> "(4) A woman or girl is deemed to be unlawfully detained for immoral purposes if she:
>
> > "(a) being under the age of 16 years and under the age of 21 years, is for those purposes detained against her will or against her parent or of any other person who has the lawful care or charge of her;

"(b) being of or above the age of 21 years is for those purposes detained against her will; or

"(c) is detained by any other person in order that she be unlawfully carnally known by any man.

"(5) A peace officer authorized by warrant under this section to search for a woman or girl may enter (if need be) by force any house or other place specified in the warrant and may remove the woman or girl therefrom.

"(6) Any warrant under this section shall be executed by the person mentioned in it, who unless the magistrate otherwise directs, may be accompanied by the parent, husband, relative or guardian or other person by whom the complaint is made, if such person so desires."

68. Although the Children's Protection Act No. 6 of 1980 has some imperfections, it is nevertheless a useful statute in protecting the children. It provides as follows under section 8:

"(1) If it appears to a Magistrate on information on oath laid by any person who, in the opinion of the Magistrate, is acting in the interest of the child, that there is reasonable cause to suspect:

"(a) that the child has been or is being assaulted, ill-treated or neglected in any place within the jurisdiction of the Magistrate in the manner likely to cause him unnecessary suffering or injury to health;

"(b) that an offence mentioned in the first schedule is being or has been committed upon or in connection with the child; or

"(c) that the child is otherwise in need of care;

The Magistrate may issue a warrant authorizing any police officer to search for the child, and if it is found that he is being or has been assaulted, ill-treated or neglected in that manner, or that an offence mentioned in the first schedule is being or has been committed upon or in connection with that child or that he is in need of care, to take him to a place of safety until he can be brought before a children's court.

"(2) A Magistrate issuing a warrant under this section may by the same warrant, cause a person accused of an offence in respect of the child to be apprehended and brought before a subordinate court and proceedings brought against him.

"(3) Any Police Officer authorized by warrant issued under this section to search and remove a child may enter (by force if need be) any house or other premises mentioned in the warrant and may remove the child therefrom.

"(4) It shall not be necessary in the warrant issued under this section to state the name of the child whose removal is thereby ordered."

69. The Children's Protection Act further provides in section 18:

"(1) that if a parent or guardian of a child assaults, ill-treats, neglects, abandons or exposes him or allows, causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or causes him to injure or detrimentally affect his health, the parent or guardian is guilty of an offence and liable to R500 and five months' imprisonment.

"(2) A parent or guardian of a child shall be deemed to have abandoned or neglected the child in a manner likely to cause him unnecessary suffering, injury or detriment to his health if he has:

"(a) unreasonably failed to provide him with adequate food, clothing, lodging or medical care;

"(b) unreasonably left the child in the care of some other person or an institution and thereafter has shown no interest in the well-being of the child;

"(c) failed to provide adequate supervision of the child; or

"(d) in the case of an infant, unreasonably left the infant in the circumstances likely to cause the infant physical or mental distress or harm.

"(3) A person may be convicted of an offence under this section notwithstanding:

"(a) that the actual suffering or injury or detriment to health:

"(i) has been obviated by the action of another person; or

"(ii) has not occurred; and

"(b) the death of the child in question.

"(4) Nothing in this section shall be construed as affecting the right of the parent or guardian of a child to administer reasonable punishment to the child."

70. The law in Lesotho also seeks to protect the populace against dangerous medicines, which may threaten life. The Dangerous Medicines Act No. 21 of 1973 states in the preamble that it is intended to "regulate importation, exportation, production, disposal and control of habit-forming medicines and potentially harmful medicines, to provide for prohibition of the dealing in,

and the use and possession of dependence producing medicines in relation to certain acts in connection with such medicines; the establishment of rehabilitation centres and to provide for related and incidental matters". Section 3 states that:

> "Notwithstanding anything to the contrary in any other law contained, any person:
>
> "(a) who deals in any prohibited medicine or any plant from which such medicine can be manufactured; or
>
> "(b) who has in his possession or uses any such medicine or plant; or
>
> "(c) who deals in any habit-forming medicine or any plant from which such medicine can be manufactured; or
>
> "(d) who has in his possession or uses any medicine or plant referred to in paragraph (c) shall be guilty of an offence and liable on conviction:
>
> "(i) in the case of a first conviction for any contravention of any provision of paragraphs (a) or (c), to a fine not exceeding one thousand Rand or to imprisonment for a period not exceeding three years or to both such fine and imprisonment;
>
> "(ii) in the case of a second or subsequent conviction for a contravention of an offence referred to in paragraph (1) to a fine not exceeding two thousand Rand or imprisonment for a period not exceeding five years or to both such fine and imprisonment;
>
> "(iii) in the case of a first conviction for a contravention of any provision of paragraph (b) to a fine not exceeding fifty Rand or for imprisonment not exceeding six months, or to both such fine and imprisonment;
>
> "(iv) in the case of a second or subsequent conviction for contravention of any provision of paragraph (b) or (c) to a fine not exceeding one thousand Rand or to imprisonment for a period not exceeding one year or to both such fine and imprisonment."

71. As far as addiction to habit-forming drugs is concerned, section 36 provides that:

> "(1) Wherever a person is found to be an addict, it shall be the duty of the Medical Practitioner attending such person to give notice

thereof confidentially and in writing to the Permanent Secretary for Health, and a Medical Practitioner who fails to give such notice shall be guilty of an offence.

"(2) On receipt of such notice the Permanent Secretary for Health shall cause the facts to be verified by an appropriately qualified person.

"(3) The Permanent Secretary for Health shall cause a register to be instituted and maintained in which shall be recorded details of known addicts in Lesotho, the cause or causes of the addiction, the medicine such person is addicted to, where such medicine was obtained by such addict, and such other particulars he may deem necessary.

"(4) Any person who without the written authority of the Permanent Secretary for Health in any manner discloses information about an addict other than provided for in this section shall be guilty of an offence."

72. On rehabilitation of addicts section 37 provides thus:

"(1) The Minister may establish out of public funds Centres for the control and rehabilitation of addicts or designate other institutions or places in Lesotho where addicts may be treated and which may include training, subject to such regulations as he may consider necessary or expedient to prescribe in order that the purpose of this act may be achieved.

"(2)

"(a) The Government of Lesotho represented by the Minister, may enter into an agreement with the government of any country in Africa for the admission of Lesotho citizens who are addicts, to any rehabilitation centre for addicts in such a country."

73. The Christian Council of Lesotho, a non-governmental organization, has a programme on alcohol and drug education in place since July 1987. It provides education/counselling on the harmful consequences of the use of alcohol and drugs. The programme aims at helping the nation with factual information about alcohol and drugs, knowledge of the physical, social and psychological effects of alcohol and drug abuse, and the best way of dealing with them.

74. There is another NGO, called The Blue Cross Centre, which was established in 1936 under the Lesotho Evangelical Church and which acts as a rehabilitation centre for drug and alcohol addicts. The Centre, which is run with funding from Norway Blue Cross, started expanded operations in 1991. It has since its inception treated over 175 people. The hospitals, particularly Queen Elizabeth II, refer patients with drug/alcohol problems to the Centre. The Centre has a working relationship with the Ministry of Health and Social Welfare, which pays all the professional staff. The Ministry will take over the running of the Centre after the project comes to an end in 1999.

Article 9

75. The Constitution of Lesotho provides under section (6) (1) that every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorized by law in any of the following cases:

"(a) in the execution of the sentence or order of a court, whether established in Lesotho or for some other country, in respect of a criminal offence which he has committed;

"(b) in the execution of the order of court punishing him for contempt of that court or of a tribunal;

"(c) in the execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

"(d) for the purpose of bringing him before a court in execution of the order of a court;

"(e) upon reasonable suspicion of having committed, or being about to commit, a criminal offence under the law of Lesotho;

"(f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

"(g) for the purpose of preventing the spread of an infectious or contagious disease;

"(h) in the case of a person who is, or is reasonably suspected to be of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or for the protection of the community;

"(i) for the purpose of preventing unlawful entry of that person into Lesotho, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Lesotho or for the purpose of restricting that person while he is being conveyed through Lesotho in the course of his extradition or removal as a convicted prisoner from one country to another; or

"(j) to such an extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Lesotho or prohibiting him from being in such an area, or to such an extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Lesotho in which, inconsequence of any such order, his presence would otherwise be unlawful."

76. The subsequent subsections state:

"(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

"(3) Any person who is arrested or detained:

"(a) for the purpose of bringing him before a court in execution of the order of a court; or

"(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within forty-eight hours of his arrest or from the commencement of his detention, the burden of proving that he has been brought before a court as soon as is reasonably practicable shall rest upon any alleging that the provisions of this subsection have been complied with.

"(4) Where any person is brought before a court in execution of the court order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

"(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either conditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

"(6) Without prejudice to the generality of any other provision of this Constitution or any other law by virtue of which a person is entitled to redress for a contravention of this section, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any other person or authority on whose behalf that other person was acting."

77. The Criminal Procedure and Evidence Act No. 9 of 1981 also provides in section 32 (1) that no person arrested without a warrant shall be detained in custody for a longer period than in all circumstances of the case is reasonable and such period shall, subject to subsection 2, unless a warrant has been obtained for further detention upon a charge of an offence, not exceed 48 hours, exclusive of the time necessary for the journey from the place of arrest to the subordinate court having jurisdiction in the matter. Subsection 2 states:

"(2) Unless a person arrested without warrant is released by reason that no charge is to be brought against him, he shall as soon as possible, be brought before a subordinate court having jurisdiction upon a charge of an offence, but if the Magistrate of the court is temporarily absent, and there is no other magistrate available who has jurisdiction in the matter, that person may be detained in custody until the return of the first mentioned magistrate or such other magistrate becoming available, whichever is earlier."

78. In practice the above-mentioned provisions are not strictly adhered to by the police. A number of citizens, including members of Parliament, and Cabinet ministers, have on various occasions been unlawfully detained by the police and security forces (this is well-documented in the recent Amnesty International report). These unlawful arrests and detention have been challenged in the High Court of Lesotho (see for example, Sello v. The Commissioner of Police 1980 LLR (1) p. 159, Solicitor-General v. Simon Frank Mapetla, Court of Appeal (CIV) No. 17 of 1984; etc.). Invariably the courts have exercised their independence and awarded damages to the aggrieved parties (see e.g. Nthaisane v. Officer Commanding Criminal Investigation Department Maseru and Another, CIV/T/480/90, unreported; Pholo v. Attorney-General, CIV/T/601/88, unreported).

79. As mentioned above, the Government, through the newly established Human Rights Unit in the Ministry of Justice and Human Rights, disseminates human rights information to the police and security forces, with a view to helping them improve their human rights record.

Article 10

Paragraph 1

80. The Lesotho Prison Rules, contained in Government Notice No. 27 of 1957, provide, in rule 3, that the object of the training and treatment accorded to convicted prisoners and to persons detained in juvenile training centres, shall be to establish in them the will to lead a good and useful life on discharge, and to prepare them to lead such a life. In particular, in the case of a person detained in juvenile training centres, such object shall be to keep them under discipline appropriate to the persons of their ages and description, and to give them such training and instruction as will lead to their reformation and to the prevention of crime.

81. Rule 8 (1) provides that "No cell shall be used for confinement of a prisoner, unless the Director and Medical Officer have certified that its size, lighting, heating, ventilation and fittings are sufficient to keep the prisoner in good health, and that it enables a prisoner to communicate at any time with an officer."

82. Rule 31 (1) states that "No officer shall use force unnecessarily when dealing with prisoners. If the application of force to a prisoner can not be avoided, no more force than is necessary shall be used and an immediate

written report shall be made to the Director" (statistics on such cases have not been readily available). Subsection (2) states that "No officer shall deliberately act in a manner calculated to provoke a prisoner."

83. Where corporal punishment has been imposed by a competent court, guidelines set under rule 44 must be followed:

> "(1) All corporal punishment must be attended by the Officer-in-Charge and Medical Officer.
>
> "(2) The Medical Officer shall, immediately before the punishment is inflicted, examine the prisoner and satisfy himself that he is both mentally and physically fit to undergo the punishment. He shall make such recommendations for preventing injury to the prisoner's health as he may deem necessary, and the Officer-in-Charge shall give effect to such recommendations."

Paragraph 2

84. Separation of accused persons from convicted persons is provided for in rule 95. It states that "Untried prisoners shall, as far as possible, be kept apart from convicted prisoners." Despite the limited facilities available in the prisons, this rule is strictly followed by prison authorities. Rule 96 further provides that restriction on the association of untried prisoners shall be limited to prevent contamination or conspiracy to defeat the ends of justice.

85. An untried prisoner may, at his expense, be supplied with food, clothing, haircutting and shaving, private medical attention, books, writing materials, letters and other facilities for his defence; he may also not do any work in prison except with his consent (see rules 97-107).

86. As far as separation of children is concerned, the Children's Protection Act provides in section 21 that, a child who is detained in a police station; is being conveyed to or from any criminal court; is waiting before or after attendance in any criminal court; or is in remand prison, shall be separated from adults. Due to lack of facilities, this is not always done in practice, particularly at police stations.

87. The Prisons Proclamation No. 30 of 1957 also provides for separation of juveniles. Section 7 (1) states that: "The Resident Commissioner may provide Juvenile Training Centres, that is to say, places in which persons under eighteen years of age who are ordered to be detained in such centres may be kept under discipline suitable to persons of their age and description and given such training and instruction as will conduce to their reformation and prevention of crime."

88. Rule 116 also provides that the Director may set aside such prisons or parts of prisons as he may deem fit, for the detention of young prisoners under the age of 18 years, in order to secure their separation from other classes of prisoners. The Juvenile Training Centre was established in 1973. It is now being given attention to properly handle juvenile offenders. Recently, a Management Board was established as required by law. It was

recommended during the workshop that deliberated on this draft report that treatment of juveniles be made in the community rather than at the Centre. This will be realized shortly after commencement of the Community Service Sentence pilot project before the end of the year (1997).

Paragraph 3

89. There are Rehabilitation Officers in the various prisons in the country to achieve the objective of rule 3 of the Prison Rules, as stated above. In pursuance of the objective an in-service training was organized for prison officers, police, probation officers, magistrates and other interested groups, to sensitize them on the United Nations Minimum Standard Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials (16-20 October 1995; see annexes).

Article 11

90. Our law does not permit imprisonment on grounds of inability to fulfil a contractual obligation.

Article 12

91. The Constitution provides in section 7 (1) that every person shall be entitled to freedom of movement, that is to say, the right to move freely throughout Lesotho, the right to reside in any part of Lesotho, the right to enter Lesotho, the right to leave Lesotho, and immunity from expulsion from Lesotho.

92. Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

93. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for such a restriction (see also under art. 2, paras. 1 and 2 above). There are no legal requirements for registration in the places of residence. In practice, a citizen or alien is required to be introduced to the Chief of the area, where he resides, for the Chief to know his subject and the subject to know his Chief.

94. As far as getting a passport to travel abroad is concerned, any person other than a civil servant is required to deposit money when applying for an international passport. This amount is security. It is equal to a one-way airfare to the place intended to be visited. This requirement has, however, been dispensed with after the coming to power of the democratically elected Government. No security is required for local passports, which are only valid for the southern African countries. In the reporting period over 3,984 applications for international passports were made. Of these 3,964 were granted and about 20 were turned down on grounds of dubious citizenship. It is also estimated that about 403,200 applications for local passports were processed in the reporting period.

Article 13

95. The democratically elected Government is committed to respecting the basic human rights of citizens and aliens alike. It is not government policy to arbitrarily expel aliens lawfully present in Lesotho. Proper procedure must be followed. See under article 2, paragraph 3 above.

Article 14

Paragraph 1

96. Article 19 of the Constitution provides that every person shall be entitled to equality before the law.

97. Article 12 (1) states that if any person is charged with a criminal offence, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time, by an independent and impartial court established by law.

98. In order to ensure that the courts are impartial, their independence is guaranteed under section 118 (2) of the Constitution, which provides that "The Courts shall, in performance of their functions under this Constitution or any other law, be independent and free from interference and subject only to this Constitution and any other law." To further enhance the independence of the judiciary, the Government reviewed the conditions of service of judges which, until recently were contractual, i.e. 24 months. Cabinet, in CAB/DEC/11 dated 23 November 1995, approved the appointment of local judges on permanent and pensionable terms.

Paragraph 2

99. The Constitution provides in article 12 (2) that every person who is charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty. This is well-documented in various cases where suspects are tried. The presumption of innocence is strictly adhered to by the courts in Lesotho, hence the courts are willing to grant bail in most bailable offences (see sects. 99-117 of the Criminal Procedure and Evidence Act 1981).

Paragraph 3

100. Section 12 (2) (b) of the Constitution states that every person who is charged with a criminal offence shall be informed as soon as reasonably practicable, in a language he understands and in adequate detail, of the nature of the offence charged. Section 12 (2) (c) of the Constitution provides that every person who is charged with a criminal offence shall be given adequate time and facilities for the preparation of his defence. In practice, the accused is given notice of trial, and if he wishes to engage a lawyer to defend him, he must inform the court accordingly. If need be, the case may be adjourned to enable the accused to contact his defence counsel.

101. Although the Constitution provides that the accused person shall be afforded a fair hearing within a reasonable time (sect. 12 (1)), the law enforcement agencies more often than not do not seem to comply with this

the magistrate that he is not obliged, in answer to the charge against him, to make a statement which incriminates him, and that what he says may be used in evidence against him.

"(4) In any proceedings any confession, which is by virtue of this section inadmissible in evidence against the person who made it, shall be inadmissible against him if he or his representative adduces in those proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made the confession, either as part thereof or in connection therewith, if such evidence is in the opinion of the officer presiding at such proceedings favourable to the person who made the confession."

Paragraph 4

106. All prisoners, including persons detained in juvenile training centres, are to be kept under discipline appropriate to persons of their ages and descriptions, and are to be given training and instruction which will lead to their reformation.

Paragraph 7

107. Section 12 (5) of the Constitution provides that no person who shows that he has been tried by a competent court and either convicted or acquitted shall be tried again for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal. Subsection 6 states that no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

108. Section 162 (2) (c) of the Criminal Procedure and Evidence Act states that an accused person may plead that he has already been convicted or acquitted of the offence with which he is charged.

Article 15

Paragraphs 1 and 2

109. In Lesotho criminal law, the principle of non-retroactivity is provided for in section 12 (4) of the Constitution, which states that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

Paragraph 2

110. What happens when there is a change in law during the trial is not clear from our point of view. We need to do further research.

Article 16

111. The moment at which legal personality is acquired under the law is also not clear, but it could be implied from the wording of section 260 (1) of the Criminal Procedure and Evidence Act that it is birth. The section reads as follows: "On the trial of a person charged with murder or culpable homicide of a newly born child, the child shall be deemed to have been born alive if it is proven to have breathed, whether or not it has an independent circulation, and it shall not be necessary to prove that the child was, at the time of its death, entirely separated from the body of the mother."

Article 17

Paragraphs 1 and 2

112. The Constitution provides in section 11:

"(1) that every person shall be entitled to respect for his private and family life and his home.

"(2) nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

"(a) in the interest of defence, public safety, public order, public morality or public health; or

"(b) for the purpose of protecting the rights and freedoms of other persons.

"(3) a person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2), except to the extent to which he satisfies the court that provision or, as the case may be, the thing done under the authority thereof does not abridge the right guaranteed by subsection (1) to a greater extent than is necessary in a practical sense in a democratic society in the interest of any matters specified in subsection (2) (a) or for the purpose specified in subsection (2) (b)."

113. Under (a) and (b) above the National Security Service and other security agencies may interfere with a person's privacy, including mail and telephone, if it is in the interest of the State.

114. In Lesotho the police keep some data on criminals, but there is no elaborate data bank on individuals.

Article 18

Paragraph 1

115. Article 13 (1) of the Constitution guarantees freedom of conscience. It states that every person shall be entitled to, and (except with his own

consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance. The Constitution further provides in subsection (2) that every religious community shall be entitled, at it own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

Paragraph 2

116. Section 13 (4) of the Constitution states that no person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

Paragraph 3

117. Subsection 5 states that nothing contained in or under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question is:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

118. In Lesotho there is no official/State religion. The main religion in Lesotho is Christianity, which is constituted by the following denominations: Roman Catholic Church; Lesotho Evangelical Church; Anglican Church of Lesotho; Methodist Church; Churches of Zion; Independent Pentecostal/Revivalist Churches.

119. Many Basotho still believe in the African traditional beliefs. There is also the Islamic faith, and the Baha'i faith, which has been in Lesotho since 1954. Statistics on these religions are not readily available. The law does not restrict the right to freedom of association. The Registrar General at the Law Office received and processed 95 applications for registration of societies in 1992, 90 in 1993, 95 in 1994 and 95 in 1995. The figures for 1996 were not complete as at the time of preparing the report. In practice, every application which satisfies the requirements of the Societies Act, 1966 is registered. Where the information supplied by the applicant is inadequate or where the law is not complied with, the Registrar General advises the applicant accordingly and gives him/her time to rectify the papers. Once every thing is in order, the society in question is registered. See also under article 22 below.

Article 19

Paragraphs 1 and 2

120. The Constitution provides for this right in section 14 (1), to the effect that every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any other person or class of person) and freedom from interference with his correspondence.

Paragraph 3

121. The restrictions on the right of freedom of expression are contained in section 14 (2) of the Constitution, which states that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) For the purpose of imposing restrictions upon public officers.

122. It should be pointed out that indecent, obscene or objectionable literature may not be imported in Lesotho - see sections 22 (3) and 124 of the Customs Proclamation No. 67 of 1956. The right to freedom of expression may not be invoked by a defendant on a charge of sedition as was held in the case of Rex v. Chief Evaristus Retsilisitsoe Sekhonyana CRI/T/36/94, where the accused was charged with the offence of contravening section 4 (1) (b) as read with section 3 (1) (i), (ii), (iii) and (iv), of the Sedition Proclamation No. 44 of 1938. The court held that the accused had a seditious intention and accordingly found him guilty, and sentenced him to pay a fine of R 200 or to serve two years' imprisonment.

123. The Printing and Public Act No. 10 of 1967 as amended is the principal law governing publication of documents and information. It does not deal with the registration and regulation of journalists. The current unwritten ministerial policy provides for provisional and yearly accreditation of journalists. No fee is paid for provisional accreditation, while M 15 is paid for yearly accreditation. The Ministry of information and Broadcasting held a Media Policy Workshop on 6 and 7 March 1997. The objectives were to encourage the growth of free, independent and pluralistic media in Lesotho, which implies that the media should be independent from government control, and an

end to media monopolies of any kind, including that of the Government and other powerful sectors of society; protection of the rights of all citizens regardless of status and, in accordance with the provisions of the Constitution, the right to seek, receive and impart ideas by using any and all means of communication. The policy also seeks to ensure that all media have access to public information, and to review and encourage the repeal of laws and discourage the passage of laws which hinder freedom of expression and the media.

Article 20

Paragraphs 1 and 2

124. Proclamation No. 44 of 1938 which deals with sedition seems to cover the requirements of this article. In particular section 3 (1) states that a seditious intention is an intention:

"(i) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, Her heirs or successors, or the Government of the Territory as by law established [since independence in 1966 Her Majesty has been replaced by His Majesty the King]; or

"(ii) to excite Her Majesty's subjects or inhabitants of the Territory to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Territory as by law established; or

"(iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Territory; or

"(iv) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of the Territory; or

"(v) to promote feelings of ill will and hostility between different classes of the population of the Territory."

125. Section 4 (1) creates the offences. It provides that "any person who

"(a) does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

"(b) utters any seditious words;

"(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

"(d) imports any seditious publication, unless he has no reason to believe that it is seditious, shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine not exceeding 200 rands or to both such improvement and fine, and for subsequent offence to imprisonment for three years, and any seditious publication shall be forfeited to the Crown."

In the case of Rex v. Chief Evaristus Retselisitsoe Sekhonyana CRI/T/36/94, the High Court found the accused guilty of contravening section 4 (1) (b).

Article 21

126. Section 15 of the Constitution provides as follows:

"(1) That every person shall be entitled to and except with his own consent shall not be hindered in his enjoyment of freedom of peaceful assembly, without arms, that is to say, freedom to assemble with other persons.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

"(a) in the interest of defence, public safety, public order, public morality or public health;

"(b) for the purpose of protecting the rights and freedoms of other persons; or

"(c) for purposes of imposing restrictions upon public officers."

127. As far as violence against peaceful and unarmed demonstrators is concerned, there was an incident on 17 August 1994, when peaceful unarmed demonstrators were fired at in front of the King's Palace, during the Lesotho constitutional crisis in which people were killed. After restoration of constitutionality to the country, it was provided for in the memorandum of understanding, as one of the conditionalities, that those responsible for the killings be amnestied. The Government has, however, made it clear that victims or their next of kin will not be prejudiced in their claim for compensation (see paragraph 59 above).

Article 22

128. Freedom of association is guaranteed in the Constitution under section 16, which provides that every person shall be entitled to and (except with his own consent) shall not be hindered in his enjoyment of freedom to associate freely with other persons for ideological, religious, political, economic, labour, social, cultural, recreational and similar purposes, except in the interest of defence, public safety, public order, public morality or public health, etc.

129. The Labour Code Order 24 of 1992 provides in section 6 that freedom of association shall be guaranteed for all workers, employers and their respective organizations in accordance with the provisions of the Code, in particular parts xiii-xx. (It must, however, be noted that in the interest of security and social stability, parts III.D and part V of the Code do not apply to a public officer.) Those parts deal with the Labour Court and contracts of employment, termination, dismissal and severance pay. See Legal Notice No. 22 of 1995.

130. The Societies Act No. 20 of 1966 provides in the preamble that it is intended to provide for the registering of societies, for the consequences of failure to register societies and for dissolving unlawful societies, to the extent that is necessary in a practical sense in a democratic society in the interest of public safety, public order, public morality and for protecting fundamental human rights and freedoms, and to make provision for related matters. Registration of societies is provided for in section 6, which states that:

"(1) On and after the appointed date any society, including a society which is excluded by the provisions, may apply to the Registrar General for registration and the application shall be made in accordance with rules made under section 30.

"(2) The Registrar General upon application by a society may order that the society be registered or may refuse to make such an order in pursuance of the provisions of section 7.

"(3) A person aggrieved by a decision of the Registrar General under this section may within 21 days thereafter appeal against that decision to the High Court.

"(4) The Registrar General shall upon payment of the fee prescribed in the schedule issue a certificate in respect of every registration effected in compliance with the judgement of the High Court on appeal under section 3."

131. Section 7 further empowers the Registrar General to reject certain applications, as follows:

"(1) The Registrar General shall not refuse to order that a society be registered under this Act unless:

"(a) the application for registration does not comply with the requirements of this Act or any rules made under section 30 or which contain provisions contrary to law; or

"(b) the purpose of the society is unlawful or contrary to the interests of public safety, public order, public morality or prejudicial to fundamental human rights and freedoms; or

"(c) the name of the society is identical with that which a society in existence is already registered, or so closely resembles that name as to be calculated to create the impression that the two societies are one and the same; or

"(d) the provisions of this Act and the rules of the society are insufficient to provide for its proper management and control.

"(2) If a society is registered in conflict with the provisions of subsection (1), the Registrar General may notify the society of that conflict, and the society shall within 30 days after the date

of that notice make such changes as may be necessary to remove the conflict unless otherwise ordered by a court of competent jurisdiction.

"(3) A society may not, without the consent of Motlotlehi, be registered by a name of Motlotlehi, be registered by a name which includes the words 'Royal' 'Crown' 'Government' or any other word which imports or suggests that it enjoys the patronage of Her Majesty or Motlotlehi or the Governments of the United Kingdom or Basutoland.

"(4) If a society is registered in conflict with the provisions of subsection (3) the Registrar General may notify the society of that conflict and the society shall change its name within 30 days from the date of that notice unless otherwise ordered by a court of competent jurisdiction.

"(5) If a society does not make any change required under subsection (2) or (4) the Registrar General shall after a further 30 days, cancel the registration of that society unless otherwise ordered by a court of competent jurisdiction."

The number of societies turned down for registration was not available at the office of the Registrar General because more often than not rejection was provisional, due to a minor failure to comply with the requirements laid in the Societies Act and Regulations. As soon as the defects are rectified the society in question is to be registered.

132. Statistics on societies registered:

Year	Number
1992	95
1993	90
1994	95
1995	110

Article 23

Paragraphs 1 and 2

133. Section 11 of the Constitution provides that every person shall be entitled to respect for his private and family life and his home, except in the interest of defence, public safety, public order, public morality or public health, etc.

134. The Marriage Act No. 10 of 1974 provides in the preamble that the Act is intended to make provision for the solemnization and registration of marriages, thus protecting the institution of the family.

Paragraph 3

135. Section 3 of the Marriage Act provides that no person may be compelled to enter into a contract of marriage with any other person or to marry against his or her wish.

Paragraph 4

136. Under our Roman Dutch Law, the husband is the administrator of the joint estate. The wife is considered to be a minor. This is confirmed by the case of Kurubally v. Kurubally 1982-1984 LLR p. 377.

137. The Matrimonial Causes Jurisdiction Act No. 21 of 1978 was intended to bring about equality in instituting proceedings in court by women, who hitherto had no right to do so. Section 2 of the Act states that:

"(1) without prejudice to the jurisdiction which the High Court otherwise has, the High Court shall have jurisdiction to entertain an action instituted by a wife against her husband:

"(a) for divorce, restitution of conjugal rights or judicial separation if the wife has been ordinarily resident in Lesotho for a period of one year immediately prior to the date on which the proceedings are instituted and if:

"(i) the husband has deserted the wife and has departed from Lesotho or has been deported, and was immediately prior to the desertion or deportation domiciled in Lesotho; or

"(ii) in an action for judicial separation, the husband is at the date resident in Lesotho;

"(b) who is not domiciled in Lesotho, for divorce or restitution or conjugal rights if:

"(i) immediately prior to the marriage the wife was domiciled in Lesotho; and

"(ii) she was ordinarily resident in Lesotho for the period of one year immediately preceding the date on which the proceedings are instituted.

"(2) Any issue in the proceedings instituted under this section shall be determined in accordance with the law which would be applicable if both parties were domiciled in Lesotho at the time of the proceedings."

138. The Government of Lesotho is concerned about the population growth rate of 2.6 per cent per annum. The Government developed a National Population Policy in June 1994. This demonstrated the Government's commitment to reduce the burgeoning population growth rate. The population policy envisages an intermediate demographic goal within the framework of its long-term goal of

achieving two children per couple by the year 2011. This will necessitate adequate provision of family planning/MCH services coupled with information, education and communication of policy measures to create an enabling environment for the adoption of a small-family norm (see Lesotho National Population Policy, June 1994). Implementation of this policy is on halt to allow for further consultations with the stakeholders and to review the implementation structures.

Article 24

Paragraphs 1 and 2

139. The Children's Protection Act No. 6 of 1980 defines a child as being an unmarried person under the age of 18 years; no reference is made to race, colour, sex, language, religion, national or social origin, property or birth.

140. The inter-ministerial committee which deliberated on the draft report felt that the concept of a single parent seems to be foreign, because the children of an unmarried woman belong to her father. There was, however, a feeling that such children are discriminated against, e.g. such a child may inherit from a natural parent, but may not inherit under customary practices. It was nevertheless conceded that in all practicality single parents exist in Lesotho, particularly where, according to a UNESCO study, 30 per cent of all households are headed by women. Despite this these women are required to get their husband's consent in matters affecting their children, e.g. procurement of a passport.

141. The Registration of Births and Deaths Act No. 22 of 1973, which is intended to consolidate laws relating to birth and death, makes provision for compulsory registration of the birth of a child, whether born alive or stillborn, and of the death of any person. Section 4 (1) states that the office of the Registrar General shall keep a register of all births and deaths occurring in Lesotho. Subsection (2) provides that the Registrar General shall be the Registrar of births and deaths, while section 8 states that separate books shall be kept by each district registrar, to be called the "birth register" and the "death register", and there shall be transcribed in them such information as to birth and deaths as is prescribed. Sections 11 and 12 provide for the duty to notify the district registrar of all births and deaths.

Paragraph 3

142. Section 38 of the Constitution provides that:

> "(1) subject to the provisions of subsections (2) and (3), every person born in Lesotho after the coming into operation of this Constitution shall become a citizen of Lesotho.
>
> "(2) save as provided in subsection (3) a person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth neither of his parents is a citizen of Lesotho; and:

"(a) one or both of his parents possess such immunity from suit and legal process as is accorded to the envoy or a foreign sovereign power accredited to Lesotho; or

(b) one or both of his parents is an enemy alien and the birth occurs in a place under occupation by the enemy.

"(3) A person born in Lesotho on or after the coming into operation of this Constitution who is disqualified to become a citizen of Lesotho by virtue of subsection (2) of this section shall become a citizen of Lesotho if he would otherwise become stateless."

143. Section 39 states that a person born outside Lesotho after the coming into operation of the Constitution shall become a citizen of Lesotho at the date of his birth if at that date either of his parents is a citizen of Lesotho otherwise than by descent.

Article 25

144. Section 29 of the Constitution provides that:

"(1) Lesotho shall endeavour to ensure that every person has the opportunity to gain his living by work which he freely chooses or accepts.

"(2) Lesotho shall adopt policies aimed at:

"(a) achieving and maintaining as high and stable a level of employment as possible;

"(b) providing technical and vocational guidance and training programmes; and

"(c) achieving steady economic, social and cultural development and full productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

Paragraphs (a) and (b)

145. The Constitution provides in section 20 (1) that every citizen of Lesotho shall enjoy the right:

"(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

"(b) to vote or to stand for election at parodic elections under this Constitution under a system of universal and equal suffrage and secret ballot;

"(c) to have access, on general terms of equality, to the public service."

146. In March 1993 general elections were held and a democratically elected Government came into being. Subsequent by-elections were also held in three constituencies. All these were held under democratic conditions, which ensured free and fair conditions.

147. In order to continue to ensure that elections are free and fair, the Government agreed to establish an Independent Electoral Commission as suggested by opposition parties and the Lesotho Council of NGOs. The Second Amendment to the Constitution Act No. 7 of 1997 provides for the establishment of an Independent Electoral Commission. Section 6 amends section 66 of the Constitution. It provides that there shall be an Independent Electoral Commission which shall consist of the following members, being persons of high moral character and proven integrity, appointed by the King acting in accordance with the advice of the Council of State:

(a) A chairman, being a person who holds, has held or qualifies to hold high judicial office; and

(b) Two other members, each of whom possesses any of the qualifications referred to in paragraph (a) or who possesses considerable experience and demonstrated competence in administration or in the conduct of public affairs.

148. Section 7 of the Second Amendment to the Constitution Act No. 7 of 1997 amends section 66 of the Constitution by adding section 66 A, 66 B, 66 C and 66 D. Section 66 A (1) states that the Electoral Commission shall have the following functions:

"(a) to ensure that elections to the National Assembly and local authorities are held regularly and that every election or referendum held is free and fair;

"(b) to organize, conduct and supervise, in an impartial and independent manner, elections to the National Assembly and referenda under the provisions of this Constitution and any other law;

"(c) to delimit the boundaries of constituencies in accordance with the provisions of this Constitution and any other law;

"(d) to supervise and control registration of electors;

"(e) to compile a general register of electors and constituency registers of electors for the several constituencies and to maintain such register or registers up to date;

"(f) to promote knowledge of sound democratic electoral processes;

"(g) to register political parties;

"(h) to ascertain, publish and declare the results of elections and referanda;

"(i) to adjudicate complaints of alleged irregularities in any respect of electoral or referendum process at any stage other than in an election petition; and

"(j) to perform such other functions as may be prescribed by or under any law enacted by Parliament."

Section 66 C provides for the independence of the Electoral Commission. It states that the Electoral Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

149. In 1995 Development Council elections were held under the Development Council Order No. 18 of 1991 as amended. This was another chance for the people of Lesotho to elect their own representatives to Development Councils. The Chiefs and the rest of the population are being sensitized about the role of the Development Councils and it is anticipated that perceived fears from certain quarters will be allayed.

Paragraph (c)

150. Section 136 (1) of the Constitution provides for the Public Service Commission. It states that there shall be a Public Service Commission, which shall consist of a Chairman and not less than two, nor more than four, other members, who shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission. Subsection (11) provides that the Commission shall, in the exercise of its functions, not be subject to the direction or control of any other person or authority. This therefore makes it independent in its work as provided under section 137 (1).

Article 26

151. The Constitution provides under section 19 that every person shall be entitled to equality before the law and to the equal protection of the law. Despite this constitutional provision, our Roman Dutch Law permits discrimination against women as being minors. The same obtains under Sesotho customary law, which relegates women to perpetual minority. This discrimination has been noted and the Government is desirous of redressing the situation by bringing about modifications and changes in ways compatible with the Constitution and the social and cultural context of Lesotho.

Article 27

152. The Basotho nation is largely made up of Sotho-speaking people, with one language (Sesotho) spoken throughout the country. There is a small minority of Nguni-speaking Basotho. The Nguni-speaking Basotho are bona fide Lesotho citizens. They are not discriminated against in any way, and are free to speak Nguni languages and practice Nguni culture. The same could be said about the Basotho of Indian, Caucasian and other African origins.

List of annexes*

Statutes and legal instruments referred to

The 1993 Constitution of Lesotho

Criminal Procedure and Evidence Act 1981

Police Order 1971

Finance Order No. 6, 1988

State of Emergency Order No. 1, 1970

Constitution Suspension Order No. 2, 1970

General Election (Invalidation) Order No. 4, 1970

Lesotho Order No. 1, 1986

National Assembly Election Order No. 10, 1992

Order No. 1, 1994

Legal Notice No. 95 of 1994

Lesotho Highland Development Authority Order 23, 1986

Customs Proclamation No. 67, 1956

Land Act No. 17 of 1979

Land Amendment Order, 1986

Aliens Control Act No. 16, 1966

Labour Code Order No. 24, 1992

Children's Protection Act No. 6, 1980

Dangerous Medicines Act

Legal Aid Act No. 19, 1978

Societies Act No. 20, 1966

Sedition Proclamation No. 44, 1938

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* Available from the Secretariat.

Legal Notice No. 22, 1995 (Labour Code Order Amendment)

Second Amendment to the Constitution Act No. 7, 1997

Lesotho Defence Force Act No. 60, 1997

Agreements

Memorandum of Understanding and Measures and Procedures Relating to the Restoration of Constitutional Order in Lesotho, Between His Majesty King Letsie III and the Prime Minister Dr. Ntsu Mokhehle, 14 September 1994

Cabinet decisions

Cabinet Decision CAB/DEC/11

Cases

Attorney-General v. Lesotho Teachers Union and Others CIV No. 29/1995

Matsela Mongali and 14 Others v. Department of Public Prosecutions 1991-1992 LLR & LB p. 106

Abel Moupo Mathaba and Others v. Enoch Lehema and Others 1993-1994 LLR & LB p. 402

Rex v. Monyake and Others CRI/T/44/93

Rex v. Chief Evaristus Rets'elisitsoe Sekhonyana CRI/T/36/94

Rex v. Kubutu CRI/T/51/91

Rex v. Nsabimana Shabani and 5 Others 1991-1992 LLR-LB p. 55

Jonny Waka Maseko v. Attorney-General 1993-1994 LLR & LB p. 207

Simon Frank Mapetla v. Solicitor General 1982-1984 LLR p. 399.

Solicitor General v. Simon Mapetla C of A CIV No. 17, 1984

Nthaisane v. Officer Commanding Criminal Investigation Department Maseru CIV/T/480/90

Pholo v. Attorney-General CIV/T/601/88

Kurubally v. Kurubally 1982-1984 LLR p. 377

Reports and other documents

Report on the International Evaluation Survey on ARI, CDD, EPI and MCH/FP, Family Health Division, Ministry of Health and Social Welfare, October 1993.
Lesotho National Population Policy, June 1994

In-service Training Course on Human Rights and Juvenile Justice, Reports 1-4.
Report on the National Seminar on Democracy and Human Rights, 1995

Oral Rehydration Therapy - Evaluation Reports.
Lesotho Population Data Sheet, Manpower Division, Ministry of Planning, Government of Lesotho, June 1994

Lesotho's Long Journey, Hard Choices at the Crossroads. John Gay, Debby Gill, David Hall (eds.), Sechaba Consultants, Maseru, 1995.

The Situation of Women and Children in Lesotho, Government of Lesotho/UNICEF

Lesotho Media Policy, June 1997